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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,203	06/15/2001	Leonard R. Bayer	HAR-003	8016
7590	12/14/2005		EXAMINER MCALLISTER, STEVEN B	
Kenneth J. LuKacher South Winton Court 3136 Winton Road South, Suite 304 Rochester, NY 14623			ART UNIT 3627	PAPER NUMBER

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/882,203	BAYER ET AL.	
	Examiner	Art Unit	
	Steven B. McAllister	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-33 and 40-46 is/are pending in the application.
- 4a) Of the above claim(s) 30-33 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-29, 40 and 42-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/19/2005 has been entered.

Response to Amendment

The declaratino filed on 9/19/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Hughes reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Hughes reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another.

MPEP 715.07 requires that:

"The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice 'amounts essentially to mere pleading, unsupported by proof or a showing of facts' and,

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thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit 'asserts that facts exist but does not tell what they are or when they occurred.').” MPEP 715.07 (last paragraph).

To fulfill this requirement, the declaration must (1) clearly explain the exhibits, showing which facts are established by each exhibit, and (2) clearly explain which facts the applicant is relying on to show conception of the claimed invention.

Claim Rejections - 35 USC § 103

Claims 25, 26, 28, 29, 40, 42, 43, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al (2002/0169665) in view of Henson (6,167,383).

Hughes shows providing market research software via a network addressable site to one or more computer systems comprising an virtual purchase environment; displaying a price of the product; returning information via the network to the network addressable site; and determining at least on of new product, configuration, price, or segmentation with the information. Hughes does not show that the software providing functions such as price updating independently from the website is sent from the network addressable site to the computer; that the software provides for product

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configuration; that the price displayed reflects selected features of a product; and that data returned comprises product configuration. Henson shows providing product configuration wherein a displayed price reflects selected features of a product and returning information comprising product configuration to a web addressable site. It would have been obvious to one of ordinary skill in the art to modify the method of Hughes by providing the interface features of Henson in order to provide for simulation of an e-tailer environment. As to sending software for providing the functions, such as updating price, independent of the website, it is notoriously old and well known in the art to do so. For instance, it is notoriously old and well known in the art to send Java programs to the user computer to accomplish such tasks independent of the server. It would have been obvious to one of ordinary skill in the art to modify the method of Henson by doing so in order to lessen the volume of interactions with the server.

As to claim 42, it is noted that the information of Hughes in view of Henson is market research information relating to the total price a user is willing to pay for the hypothetical item with the selected features.

As to claims 26 and 43, it is noted that Henson shows features having subfeatures for selection and that the price varies according to these subfeatures.

As to claims 28 and 45, it is noted that Hughes in view of Henson inherently show sending data representing interim changes made to the configuration since Hughes shows collecting and sending back data relating to the mouse "clicks" made by

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the user during the virtual shopping session, and that in the context of the combination with Henson this includes data regarding all configuration changes.

As to claim 29, Hughes in view of Henson is unrelated to any real purchase.

As to claims 40 and 46, Hughes shows sending survey questions to the computer systems from the network addressable site one of before, during, or after the sending the market research software, which enables the user to answer questions.

Claims 27 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al in view of Henson as applied to claims 25 and 42 above, and further in view of Ghahramani (5,808,908).

Huges et al in view of Henson show all elements of the claim except measuring the elapsed time to complete the task. Ghahramani shows determining the elapsed time. It would have been obvious to one of ordinary skill in the art to further modify the method of Hughes by determining the elapsed time as taught by Ghahramani in order to help measure and improve usability of the system.

Response to Arguments

Applicant's arguments filed 9/19/2005 have been fully considered but they are not persuasive.

Due to the ineffective declaration, the use of Hughes is still proper and the rejection is therefore still proper.

It is noted that claims 25-29 and 40 would define over the applied prior art and would appear more likely to be allowable, if claim 25 were amended to recite generally the system is not capable of receiving, processing or fulfilling orders.

As to claims 42-46, the above limitation along with a limitation further reciting the information that is returned to the server (e.g., that it returns end configuration, end price, and the configuration/price pairs viewed during the session, etc.) would appear more likely to be allowable.

It is noted that prior to performing a supplemental search, it is not possible to positively determine whether the suggested limitations would make the claims patentable.

The examiner invites the applicant to contact him with any questions at 571-272-6785.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (571) 272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on (571) 272-6771. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

Steven B. McAllister
Primary Examiner
Art Unit 3627

STEVE B. McALLISTER
PRIMARY EXAMINER